

Before the
Administrative Hearing Commission
State of Missouri



DIRECTOR OF INSURANCE,
FINANCIAL INSTITUTIONS, AND
PROFESSIONAL REGISTRATION,

Petitioner,

vs.

WILLIAM D. MONTGOMERY,

Respondent.

No. 08-1325 DI

071212371C

DECISION

The Director of Insurance, Financial Institutions, and Professional Registration ("Director") has cause to discipline William D. Montgomery as a licensed insurance producer because Montgomery pled guilty to two felonies and failed to report the prosecution to the Director, as Missouri insurance law requires.

Procedure

On July 17, 2008, the Director filed a complaint to establish cause to discipline Montgomery as a licensed insurance producer. On October 15, 2008, Montgomery was personally served with a copy of the complaint and the notice of complaint/notice of hearing at the Duluth Federal Prison Camp. Montgomery did not respond. We held a hearing on January 5, 2009. Elfin L. Noce represented the Director. Neither Montgomery nor anyone representing him appeared. The reporter filed the transcript on January 20, 2009.

Findings of Fact

1. On November 7, 1974, the Director licensed Montgomery as an insurance producer. Montgomery's license is currently active and set to expire on April 12, 2009.

2. On August 17, 2005, a superseding indictment was entered against Montgomery in the United States District Court for the Western District of Missouri charging five counts.

Counts One and Two charged Montgomery as follows:

Count One

On or about March 1, 2005, in Wright County, in the Western District of Missouri, WILLIAM DOUGLAS MONTGOMERY, the defendant, then being an unlawful user of illegal controlled substances; i.e., methamphetamine, a Schedule II Controlled Substance, cocaine, a Schedule II Controlled Substance, and marijuana, a Schedule I Controlled Substance, knowingly did possess, in and affecting commerce, the following firearm: Colt, MK IV, .45 caliber pistol, serial number 53431G70, and ammunition, in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).

Count Two

On or about March 17, 2005, in Wright County, in the Western District of Missouri, WILLIAM DOUGLAS MONTGOMERY, the defendant, then being an unlawful user of illegal controlled substances; i.e., methamphetamine, a Schedule II Controlled Substance, cocaine, a Schedule II Controlled Substance, and marijuana, a Schedule I Controlled Substance, knowingly did possess, in and affecting commerce, the following firearms:

1. Savage Arms, Savage 30 series D, 12 gauge, shotgun, S/N: B612749;
2. Winchester, model, 1200, 12 gauge, shotgun, S/N L730874;
3. Winchester, model 94, 30-30win, rifle, S/N: 3638800;
4. Remington, 870 express, 12 gauge, shotgun, S/N: W652363M;

5. Remington, model 1100 LT-20 Special, 20 gauge, shotgun,

S/N: N902349K;

6. Savage, model 110CL, 30-06, rifle, S/N: E051760;

7. Winchester, model 1300, 12 gauge, shotgun, S/N: L2276416; and,

ammunition, in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).

3. On May 21, 2007, in the United States District Court for the Western District of Missouri, Montgomery pled guilty to Counts One and Two.

4. On May 21, 2007, the court sentenced Montgomery to 36 months' imprisonment on each of Counts One and Two, to run concurrently. Judgment was entered on May 24, 2007.¹

5. Montgomery failed to report to the Director within 30 days of the initial pretrial hearing date that he had been prosecuted for a felony.

Conclusions of Law

We have jurisdiction to hear the Director's complaint.² The Director has the burden to prove facts on which the law allows discipline.³

The Director's evidence consists of certified records of Montgomery's criminal case and of a copy of Petitioner's First Request for Admissions to which Montgomery failed to respond. Montgomery's failure to respond establishes the matters asserted in the request, and no further proof is required.⁴ That rule applies to all parties, including those acting without an attorney.⁵

¹Although the complaint and Petitioner's First Request for Admissions state that Montgomery pled guilty and had sentence imposed on May 24, the "Judgment in a Criminal Case," signed by the judge, states: "Date of Imposition of Sentence: May 21, 2007." The judge's signature is dated May 24, 2007, and the Exemplification Certificate states that the Judgment was entered on May 24, 2007. Petitioner's First Request for Admissions were not marked as an exhibit at the hearing, but were received into evidence.

²Section 375.141.4. Statutory references are to RSMo Supp. 2008 unless otherwise noted.

³*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁴Supreme Court Rule 59.01, as applied to our proceedings by § 536.073, RSMo 2000, and 1 CSR 15-3.420(1); *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

⁵*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

Such a deemed admission can also establish “application of the facts to the law, or the truth of the ultimate issue, opinion or conclusion, so long as the opinion called for is not an abstract proposition of law.”⁶ Nevertheless, the General Assembly and the courts have instructed that we must:⁷

make an independent assessment of the facts to determine whether cause for disciplining a licensee exists. . . . But this impartiality would be compromised if the determination of cause was not a separately and independently arrived at determination by the Hearing Commission.

We therefore independently apply the law to the facts that Montgomery is deemed to have admitted.

In Count I of the complaint, the Director contends that Montgomery's plea of guilty to a felony is cause for discipline. Section 375.141.1(6) authorizes the Director to discipline licensees for “[h]aving been convicted of a felony or crime involving moral turpitude.” Title 18 USC § 1(1) defines a felony under federal law as “[a]ny offense punishable by death or imprisonment for a term exceeding one year[.]” 18 USC § 924(a)(2) provides for a term of imprisonment of not more than ten years for a knowing violation of 18 USC § 922(g)(3). Therefore, the crimes to which Montgomery pled guilty in Counts One and Two of the superseded indictment are felonies. Therefore, there is cause to discipline Montgomery under § 375.141.1(6).

In Count II of the complaint, the Director contends that Montgomery’s failure to report his criminal prosecution to the Director violates § 375.141.7 and is therefore cause for discipline under § 375.141.1(2). Section 375.141 provides:

⁶*Briggs v. King*, 714 S.W.2d 694, 697 (Mo. App., W.D. 1986).

⁷*Kennedy v. Missouri Real Estate Comm'n*, 762 S.W.2d 454, 456 -457 (Mo. App., E.D. 1988).

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

Section 375.012.1 provides that §§ 375.012 to 375.146 may be cited as the "Insurance Producers Act." Therefore, § 375.141.7 is part of the "insurance laws."

Although there is no evidence of the initial pretrial hearing date, Montgomery, by his failure to respond to Petitioner's First Request for Admissions, is deemed to have admitted Request 11, which states:

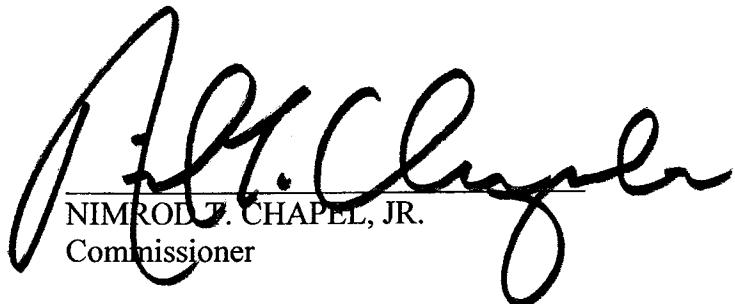
Respondent failed to report to the Director within thirty (30) days of the initial pretrial hearing date that he had been prosecuted for a felony or a crime involving moral turpitude.

There is cause to discipline Montgomery under § 375.141.1(2) for violating § 375.141.7.

Summary

There is cause to discipline Montgomery under § 375.141.1(2) and (6).

SO ORDERED on March 2, 2009.


NIMROD T. CHAPEL, JR.
Commissioner